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02/11/98

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February 11, 1998

VIA FACSIMILE

US EPA RECORDS CENTER REGION 5



470038

Mr. Frank J. Biros
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington DC 20044-7611

Re: Albion-Sheridan Township Landfill Superfund Site
Our File: 71

Dear Mr. Biros:

Enclosed is a revised version of the draft Consent Decree which incorporates your January 16, 1998 comments. As you will note, we have dropped the "recital" issue, and I don't think we need to make any statements with regard to the UAO compliance issue. Please review the enclosed and advise me whether these changes are acceptable.

Very truly yours,

FINK ZAUSMER, P.C.

Michael L. Caldwell

MLC/kad

cc: Mr. Kurt Lindland
Philip M. Moilanen, Esq.

RECEIVED

FEB 17 1998

U.S. EPA, REGION 5
Office of Regional Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,
vs.

Civil Action No.
Judge

DECKER MANUFACTURING CORPORATION,

Defendant.

CONSENT DECREE

Kathleen - here are my
contributions on this.
T. A. S.
Amil

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Albion-Sheridan Township Landfill Superfund Site, located at 29975 East Erie Road, Sheridan Township, Calhoun County, Michigan ("the Site").

B. The Defendant, Decker Manufacturing Corporation, that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of

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this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, and all

Handwritten signature
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Interest on all such costs.

k. "Plaintiff" shall mean the United States of America.

l. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

m. "Settling Defendant" shall mean the Decker Manufacturing Corporation, a corporation duly incorporated in the State of Michigan with its principle place of business located at 703 North Clark Street, Albion, Michigan.

n. "Site" shall mean the Albion-Sheridan Township Landfill Superfund site, encompassing approximately 18 acres of a 30 acre parcel, located between Michigan Avenue and East Erie Road, and bordered on the east by the Calhoun/Jackson County line in Sheridan Township, Calhoun County, Michigan, and depicted more clearly on the map included in Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$250,000 in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date of lodging of this Consent Decree through the date of payment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____,

the EPA Region and Site Spill ID Number 05AN, and DOJ Case Number 90-11-2-1109. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Michigan, Southern Division, following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to:

Regional Financial Management Officer
U.S. Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

5. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$1000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30

Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

9. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

10. Covenant Not to Sue by United States. Except as specifically provided in Paragraph ~~12~~¹¹ (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant, its shareholders, directors, officers, employees or agents pursuant to Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), for civil penalties and punitive damages for potential violations of the EPA Administrative Order Docket No. V-W-96-C-316 through November 12, 1997, and pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs in connection with the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This

covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant, its shareholders, directors, officers, employees or agents and does not extend to any other person. The above covenant not to sue (and reservations of rights thereto) shall also apply to Settling Defendant's officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Defendant.

11. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative

order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

12. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, or with respect to response costs it has incurred or will incur on or before November 12, 1997 to comply with the EPA Administrative Order Docket No. V-W-96-C-316, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

13. Nothing in this Consent Decree shall be deemed to constitute approval or pre-authorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

14. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

15. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs. The parties agree, and by entering this Consent Decree, the Court finds, that any such protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.A. § 9613(f)(2), for "matters addressed" in this Consent Decree shall also apply to Settling Defendant's officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the

Settling Defendant.

16. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree (other than counterclaims and crossclaims brought by Settling Defendant in an action initiated by others), it will notify EPA and DOJ in writing no later than 45 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 15 days of service of the complaint or claim upon it, and at that time, will advise the EPA and DOJ whether Settling Defendant intends to file any Crossclaims or Counterclaims related to this Consent Decree. In addition, Settling Defendant shall notify EPA and DOJ within 15 days of service or receipt of any Motion for Summary Judgment, and within 15 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in

this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. CERTIFICATION OF SETTLING DEFENDANT

18. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any ^{way} to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

19. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the

addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-11-2-1109

As to EPA:

~~KATHLEEN SCANLON~~
~~Kurt Lindland~~

Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Jon Peterson
Remedial Project Manager
Superfund Division
U.S. Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Settling Defendant:

Michael Caldwell
Fink Zausmer, P.C.
31700 Middlebelt Road, Suite 105
Farmington Hills, Michigan 48334-0100

XII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent

Decree.

XIII. INTEGRATION/APPENDICES

21. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

22. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

23. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

24. The effective date of this Consent Decree shall be the

date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

25. The undersigned representative of the Settling Defendant to this Consent Decree and the Chief, Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

26. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

27. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

DATE: _____

Joel M. Gross
Chief, Environmental Enforcement
Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Michael H. Dettmer
United States Attorney
Western District of Michigan

W. Francesca Ferguson
Assistant United States Attorney
Western District of Michigan
333 Ionia Avenue, N.W., Suite 501
Grand Rapids, Michigan 49503
(616) 456-2404

Francis J. Biros
Trial Attorney
Environmental Enforcement Section
Environmental and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 616-6552

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

Date: _____

David A. Ullrich
Acting Regional Administrator,
Region 5
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

~~Kurt Lindland~~ KATHLEEN SCHNIEDERS
Assistant Regional Counsel
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR DEFENDANT DECKER MANUFACTURING
CORPORATION

Date: _____

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Philip M. Moilanen

Title: Attorney

Address: Bullen, Moilanen, Klaasen & Swan, P.C.
402 Brown Street
Jackson, MI 49203-1426

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